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IN THE

SUPREME COURT OF THE UNITED STATES

No. 74-1452

HOSPITAL BUILDING COMPANY,
Petitioner,

vs.

TRUSTEES OF THE REX HOSPITAL, a Corporation, JOSEPH BARNES, GEORGE STOCKBRIDGE, and RICHARD URQUHART, JR.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals for the Fourth Circuit

SUPPLEMENTAL BRIEF FOR PETITIONER

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This Supplemental Brief is filed by the petitioner Hospital Building Company (hereafter "HBC") to call attention to the impact of the unanimous decision of this Court in *Goldfarb v. Virginia State Bar*, — U.S. —, 43 U.S.L.W. 4723 (June 16, 1975), on the issues raised in HBC's Petition for Writ of Certiorari. (Justice Powell did not participate in that decision.)

DISCUSSION

In *Goldfarb* this Court rejected the argument that anticompetitive conspiracies in the providing of local services cannot substantially affect interstate commerce and thereby be subject

to the Sherman Act. This Court viewed the providing of legal services in *Goldfarb* as part of an interstate transaction and stated further that an anticompetitive restraint of such services, as a practical matter, substantially affected interstate commerce.

In holding the legal services in *Goldfarb* to be part of an interstate transaction, this Court highlighted the interstate financing of real estate transactions, particularly the involvement of out-of-state lenders and the role of instrumentalities of the federal government in guaranteeing that financing. These elements of financing were the interstate aspects of "conduct which is an inseparable element of a larger program dependent for its success upon activity which affects commerce between the states." (43 U.S.L.W. 4727). There was no requirement that the conspiracy alleged be "directed" at this interstate financing. It was sufficient that the conspiracy affected a local service that was an essential part of the interstate transaction.

In the instant case, just as out-of-state lenders and the federal government financed the purchase of real property and of ancillary legal services in *Goldfarb*, national health insurance companies and the federal government through the Medicare and Medicaid programs finance the purchase of hospital services.

As HBC argued in the instant case, the providing of hospital services is a central part of an interstate transaction. The construction by HBC of its expanded hospital is to be financed by out-of-state lenders and the additional supplies necessary for providing hospital services at the expanded hospital are to be purchased in interstate commerce. Payment for the hospital services provided by HBC now and in the future is made almost entirely by national health insurance companies and by the federal government through Medicare and Medicaid programs. There is, therefore, a flow of construction financing money and supplies in interstate commerce to HBC which enables it to provide services paid for in turn by a flow of money in interstate commerce to HBC from national health insurance companies and the federal government. As this Court observed in *Goldfarb:*

> "The County Bar relies on *United States v. Yellow Cab Co.*, 332 U.S. 218 (1947), to support its argument that the 'essentially local' legal services at issue here are beyond the Sherman Act. There we held, *inter alia*, that intrastate taxi trips that occurred at the start and finish of interstate rail travel were 'too unrelated to interstate commerce to constitute a part thereof within the meaning of the Sherman Act. 332 U.S., at 230. The ride to the railway station, we said, '[f]rom the standpoints of time and continuity . . . may be quite distinct and separate from the interstate journey.' *Id.*, at 232. Here, on the contrary, the legal services are coincidental with interstate real estate transactions in terms of time, and more important, in terms of continuity they are essential. Indeed, it would be more apt to compare the legal services here with a taxi trip between stations to change trains in the midst of an interstate journey. In *Yellow Cab* we held that such a trip was a part of the stream of commerce. *Id.*, at 228, 229."

Moreover, the providing of hospital services is not merely an inseparable part of the interstate transaction as were the legal services in *Goldfarb*, it is the core of that interstate transaction, and it is this core which the alleged conspiracy in the instant case seeks to monopolize and restrain.

The substantiality of the effect on interstate commerce of the alleged conspiracy in this case is apparent. The monopolization and anticompetitive restraints alleged affect the price paid by the federal government and national health insurance companies for such services by all competitors *in the entire market*, not merely the price of services charged by HBC. Likewise, such restraints also affect the flow of supplies in interstate commerce to all competitors in the entire market.

In *Goldfarb*, the small increase in the price of legal services ancillary to the substantial volume of real estate purchases was a sufficient effect on interstate commerce to justify jurisdiction under the Sherman Act without any showing of the specific magnitude of the effect nor of any actual increase in price. In the instant case, the conspiracy does not affect an ancillary service (such as doctors' fees) but directly affects the price of hospital services themselves. The substantial effect of the alleged conspiracy in the instant case was highlighted by Judge Winter, dissenting in the Court of Appeals below as follows:

> "Actual or attempted monopolization of the local market could have a dramatic effect, not only to decrease the flow of hospital payments, but to increase the cost of hospital care in the Raleigh area as well. If hospital care costs are increased, insurance costs will also increase, and federal and out-of-state providers will spread these increased costs beyond the local area in which they are incurred. And this is so even if the overall market for hospital care in the Raleigh area is neither increased nor diminished, but only concentrated in the hands of the hospital defendants."

HBC has clearly shown a substantial effect on interstate commerce as a result of the alleged conspiracy, and, as this Court noted in *Goldfarb*, "once an effect is shown, no specific magnitude need be proved." Certainly the purchasers of hospital services (who finance such purchases through national health insurance companies and the federal government) are being denied the benefits of free competition as were the purchasers of legal services in *Goldfarb*.

CONCLUSION

In *Goldfarb*, this Court reaffirmed its previous decisions stating the breadth of jurisdiction under the Sherman Act. The decision of the Court of Appeals below is in conflict with the decision of this Court in *Goldfarb*.

The Petition for Writ of Certiorari should be granted and the decision below reversed and remanded for trial on the merits.
Dated: July 7, 1975.

Respectfully submitted

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Certificate of Service

I, John K. Train, III, member of the firm of Alston, Miller & Gaines, Atlanta, Georgia, do hereby certify that I caused copies of the Supplemental Brief for Petitioner in *Hospital Building Company v. The Trustees of Rex Hospital, et al.*, October term, 1974, Docket No. 74-1452, this 7th day of July, 1975, by

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